Supreme Court, U.S.
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In The

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Supreme Court of the United States

BRONCO WINE COMPANY, a California corporation,

Petitioner,

v.

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS; JOHN W. MAGAW, Director of the Bureau of Alcohol, Tobacco and Firearms,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Judicial review of agency compliance with United States law is available under the Administrative Procedure Act unless a statute precludes it. Congress precluded judicial review of an agency's implementation of (or failure to implement) the trade agreements known as the Uruguay Round Agreements (Agreements). Simultaneously, Congress itself implemented the Agreements by amending hundreds of federal statutes. Does the bar to review of agency compliance with the Agreements themselves also preclude judicial review of an agency's failure to comply with one of these statutes as amended?

LIST OF PARTIES/RELATED ENTITIES

In addition to Petitioner, the parties to this petition are the Bureau of Alcohol, Tobacco and Firearms and its Director, John W. Magaw. S.Ct.R. 21.1(b).[1]

[1] The other individual defendants named below are not parties to this petition.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Bronco Wine Company asks this Court to review by certiorari the opinion and judgment of the United States Court of Appeals for the Ninth Circuit entered on February 11, 1999. The Ninth Circuit denied a petition for rehearing on April 13, 1999.

OPINION BELOW

The district court's opinion is reported. *Bronco Wine Co. v. Bureau of Alcohol, Tobacco & Firearms*, 997 F.Supp. 1318 (E.D.Cal. 1997). The unpublished opinion affirming the judgment of the district court, *Bronco Wine Co. v. Bureau of Alcohol, Tobacco & Firearms*, No. 98-15444, 1999 WL 68632 (9th Cir. Feb. 11, 1999), and the order denying a petition for rehearing, *id.* (9th Cir. Apr. 13, 1999), are attached as an appendix to this petition.

JURISDICTION

This Court has jurisdiction to entertain this petition for a writ of certiorari from a final judgment of a Circuit Court of Appeals. 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This petition involves provisions of the Administrative Procedure Act, the Uruguay Round Agreements Act, the Lanham Trademark Act, and a regulation of the

Bureau of Alcohol, Tobacco and Firearms concerning geographic brand names on wine labels.

The Administrative Procedure Act provides in part:

> A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute is entitled to judicial review thereof.

5 U.S.C. § 702.

> This chapter [providing for judicial review] applies . . . except to the extent that – [¶] statutes preclude judicial review. . . .

5 U.S.C. § 701(a)(1).

The Uruguay Round Agreements Act provides in part:

> No person other than the United States –
>
> shall have any cause of action or defense under any of the Uruguay Round Agreements or by virtue of congressional approval of such an agreement, or
>
> may challenge, in any action brought under any provision of law, any action or inaction by any . . . agency . . . of the United States . . . on the ground that such action or inaction is inconsistent with such agreement.

§ 102, Pub.L. 103-465, 108 Stat. 4815, codified at 19 U.S.C. § 3512(c)(1).

The Lanham Trademark Act provides in part:

> No trademark . . . shall be refused registration . . . unless it . . . [¶] [c]onsists of . . . a

> geographical indication which, when used on or in connection with wines . . . identifies a place other than the origin of the goods and is first used on or in connection with wines . . . by the applicant on or after one year after the date on which the WTO Agreement (as defined in Section 3501(9) of Title 19) enters into force with respect to the United States [January 1, 1996].

15 U.S.C. § 1052(a).

Title 27 of the Code of Federal Regulations provides in part:

> [A] brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named. [Except for] brand names used in existing certificates of label approval issued prior to July 7, 1986. . . .

27 C.F.R. §§ 4.39(i)(1) & (2).

STATEMENT OF THE CASE

A. Summary of Material Facts

"Rutherford" is a small town in California. "Rutherford Vineyards," a trademark belonging to Petitioner Bronco Wine Company (Bronco), has been used as a brand name on wines since 1968. In 1993, Respondent Bureau of Alcohol, Tobacco and Firearms (ATF) designated a six thousand acre section of California's Napa

Valley as the "Rutherford" American viticultural area (AVA).[2] 27 C.F.R. § 9.133.

Beginning in 1995, ATF issued a series of certificates of label approval (COLAs)[3] approving Bronco's use of labels bearing the "Rutherford Vineyards" mark and a California appellation of origin (*e.g.*, "Rutherford Vineyards California Chardonnay"). Under ATF regulations, these COLAs allowed Bronco to use the mark on wine made from grapes grown in any two or more counties in California, rather than limiting its use to grapes grown in the Rutherford viticultural area. See 49 Fed.Reg. 19330, 19332 (May 7, 1984) (ATF proposed rulemaking).[4]

Bronco began to market significant quantities of "Rutherford Vineyards" wine made from grapes grown in two or more California counties. Despite its earlier approval, ATF summarily detained 32,000 cases of "Rutherford Vineyards" wine in October of 1996 and forbade its sale.

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[2] ATF allows any interested person to petition for recognition of an AVA, which ATF defines as a geographic area of viticultural significance. 27 C.F.R. § 4.25a(e)(2)(i).

[3] ATF requires anyone wishing to sell alcoholic beverages in interstate or foreign commerce to first obtain a COLA. 27 U.S.C. § 205.

[4] A grape variety on a wine label must include an appellation of origin describing where the grapes were grown. 27 C.F.R. § 4.34(b). ATF allows state appellations if 75% of the wine grapes are grown in two or more counties in the state. For AVAs, the percentage increases to 85%. 27 C.F.R. §§ 4.25a(b)(1)(i) & (e)(3)(ii). These percentages are not relevant here and Bronco will refer only to "the place where the wine grapes were grown" for simplicity.

According to ATF, use of the "Rutherford Vineyards" mark violated its geographic brand name regulations (27 C.F.R. § 4.39(i)) because, in ATF's view, the mark contained the word "Rutherford" which corresponded to a place name in an AVA recognized by ATF, the wine grapes were not grown in the Rutherford AVA, and the mark did not qualify under ATF's grandfather date of July 7, 1986.[5]

ATF warned Bronco that future wine sales under the Rutherford Vineyards mark would be considered a willful violation of Bronco's basic permit to engage in the wine business (which could lead to the permit's revocation) unless the grapes were grown in the Rutherford AVA. Bronco could not comply with these conditions and has been precluded from using its trademark.

B. Summary of Procedural History

Bronco filed a complaint in the United States District Court for the Eastern District of California seeking a declaratory judgment under the Administrative Procedure Act (APA) reasoning as follows:

Congress determined in the Lanham Trademark Act (Lanham Act) that geographic trademarks on wine labels

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[5] As noted, "Rutherford Vineyards" has been used on wine since 1968. ATF, however, placed upon *Bronco* the burden of demonstrating that the mark was in use on or before July 7, 1986, pursuant to an approval *issued by ATF*. Bronco has been unable to meet this burden, in large part because *ATF itself has no records of approvals for 1986 or earlier.* In short, ATF cannot demonstrate it did not approve use of the mark on a wine label before the grandfather date.

which did not describe the origin of the wine grapes could be registered (and could continue to be used) so long as those marks were in use on January 1, 1996.[6] 15 U.S.C. § 1052(a). "Rutherford Vineyards," which did not describe the source of the wine grapes and which was legally in use on January 1, 1996 (pursuant to an approval issued by ATF), qualified for continued use under the grandfather clause chosen by Congress.

ATF's regulations dealing with precisely the same subject – geographic brand names on wine labels that do not correspond to the origin of the wine grapes – contained a July 7, 1986 grandfather date, a date nearly ten

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[6] The legislative history of Section 1052(a) makes clear that Congress intended that qualifying marks could continue to be used whether eventually registered or not.

> Section 522 of the implementing bill amends section 2 of the Trademark Act of 1946 [15 U.S.C. § 1052(a)] to provide that trademarks that consist of, or comprise, a geographical indication for wines or spirits that do not in fact originate in that geographic area will be refused registration if the mark was first used after the WTO Agreement has been in effect for one year. Any trademark consisting of a geographic indication that is currently registered *or in use*, or that is registered *or in use* during the period before the WTO Agreement has been in effect for a year, *may be maintained*.

Statement of Administrative Action, 1994 U.S. Code Cong. & Admin. News 4040, 4294 (emphasis added). This intent is consistent with the principle that a trademark is "a common law property right that exists independently of statutory provisions for registration." *Sweetarts v. Sunline, Inc.*, 380 F.2d 923, 926 (8th Cir. 1967).

years earlier than that chosen by Congress. Because of this conflict between ATF's regulation and Congressional intent, ATF's regulation was "arbitrary, capricious . . . or otherwise not in accordance with law [the Lanham Act]. . . . " 5 U.S.C. § 706(2)(A).[7]

Neither the district court nor the court of appeal reached the merits because they failed to distinguish between an international agreement approved by Congress and implementation of that agreement by Congress through the affirmative amendment of United States law (here, the Lanham Act). Both courts found that restrictions on judicial review of agency action for compliance with the international agreement extended to bar judicial review of agency compliance with the Lanham Act because Congress had amended it to implement that agreement. Neither court recognized that once Congress

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[7] If ATF's regulations rendered use of a geographic mark on a wine label that did not describe the origin of the wine grapes illegal, that mark could not be registered despite a clear statement of Congressional intent in the Lanham Act that this characteristic would not prevent registration. *See Gray v. Daffy Dan's Bargaintown*, 823 F.2d 522, 525-26 (Fed.Cir. 1987). The legislative history of the amendment to the Lanham Act recognizes the need for ATF to modify its regulations governing wine labels: "The United States *will implement* the Agreement's provisions on geographical indications for wine and spirits *through the labeling regulations of the Bureau of Alcohol, Tobacco and Firearms* of the Department of the Treasury. The Agreement specifically recognizes that the rights in geographic indications for wine and spirits may be enforced through administrative action." Administrative Action, 1994 U.S. Code Cong. & Admin. News at 4299 (emphasis added).

amends a statute to implement an international agreement, in legal contemplation the corresponding terms of the international agreement no longer exist.

In granting ATF's motion to dismiss Bronco's APA claim, the district court interpreted the bar to any private right of action under the Uruguay Round Agreements (Agreements) and the Uruguay Round Agreements Act (the Act) to extend as well to any action under the APA alleging non-compliance with a statute Congress had amended to implement the Agreements – "the provision of the Uruguay Round Agreements Act which strips private plaintiffs of a cause of action trumps the Administrative Procedures [sic] Act's grant of a cause of action." *Bronco Wine Co. v. Bureau of Alcohol, Tobacco & Firearms*, 997 F.Supp. 1318, 1322 (E.D.Cal. 1997).

The Court of Appeals affirmed on slightly different grounds. While noting the bar to any private right of action under the Agreements or the Act, the Court of Appeal found review was precluded under the APA "because the APA specifically excludes review when a statute precludes judicial review." *Bronco Wine Co. v. Bureau of Alcohol, Tobacco & Firearms*, 1999 WL 68632 (9th Cir. Feb. 11, 1999). Although not entirely clear in its reasoning, the Court of Appeal appeared to conclude not only that the "no private right of action" clause in the Act precluded judicial review of ATF's compliance with the Lanham Act, but the bar to judicial review of ATF's compliance with the Agreements themselves extended to statutes such as the Lanham Act that were amended to implement the Agreements.

Bronco petitioned for rehearing, noting that the APA itself provided a private right of action and that any barrier to a private right of action in the Act was not a statute precluding judicial review under the APA. The Court of Appeal summarily denied rehearing on April 13, 1999.

REASONS FOR GRANTING REVIEW

This Case Presents An Issue Of First Impression – When Congress Precluded Judicial Review Of Agency Compliance With A Trade Agreement, Did Congress Also Intend To Preclude Judicial Review Of Agency Compliance With A Statute That Congress Itself Amended To Implement The Agreement?

The APA provides a "private right of action" to "persons aggrieved by agency action." 5 U.S.C. § 702. *See generally Heckler v. Chaney*, 470 U.S. 821, 828-30 (1985). A plaintiff need not establish a private right of action under a statute in order to seek relief under the APA. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 317-19 (1979). There is a strong presumption that agency action is subject to judicial review under the APA. *See generally Gutierrez De Martinez v. Lamagno*, 515 U.S. 417, 424 (1995).

Judicial review is not available under the APA, however, if a statute precludes it. 5 U.S.C. § 701(a)(1). The intent to preclude judicial review is found only when "[a] clear command of the statute," *Barlow v. Collins*, 397 U.S. 159, 167 (1970), provides that agency action cannot be reviewed by a Court. "[O]nly upon a showing of 'clear and convincing evidence' of a contrary legislative intent

should the courts restrict access to judicial review." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 141 (1967). *See, e.g., Briscoe v. Bell*, 432 U.S. 404 (1977) ("shall not be reviewable in any court" suffices).

In reviewing agency action under the APA, a court is to determine if the agency's acts are contrary to law. 5 U.S.C. § 706(2)(A). The "law" at issue need not necessarily be the statute the agency administers (here, the Federal Alcohol Administration Act, 27 U.S.C. §§ 201 *et seq.*), since agencies are required to adjust their acts to the will of Congress expressed in other statutes.

> Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task.

See Southern S.S. Co. v. NLRB, 316 U.S. 31, 47 (1942). *See generally Sure-Tan v. NLRB*, 467 U.S. 883 (1984); Jaffe, *Judicial Control of Administrative Action* 590 (1965).

The APA provides Bronco with a cause of action to challenge ATF's failure to conform its regulations to the Lanham Act. Still, neither Court below reached the merits of this claim because both found that a statute precluded judicial review under the APA. The statute both courts relied upon was the Uruguay Round Agreements Act (the Act).

The district court relied on the Act's provision that no individual "shall have any cause of action or defense under any of the Uruguay Round Agreements or by

virtue of congressional approval of such an agreement. . . . " 19 U.S.C. § 3512(c)(1)(A).[8] The bar to a private right of action does not bar judicial review – an affected person may obtain judicial review of agency action under the APA despite the fact that there is no private right of action under the statute challenged. *See Chrysler Corp.*, 441 U.S. at 317-19.

The more plausible reason for finding judicial review was precluded here is the one provision in the Act that does speak directly to judicial review of agency action, providing that no one "may challenge, in any action brought under any provision of law, any action or inaction by any . . . agency . . . of the United States . . . on the ground that such action or inaction is inconsistent with such agreement." 19 U.S.C. § 3512(c)(1)(B). "Such agreement" in subsection (B) refers to the Uruguay Round Agreement (hereafter "Agreements") mentioned in subsection (A). Subsection (B) therefore in plain language precludes only judicial review of agency action on the grounds that it is inconsistent with the *Agreements themselves*. Subsection (B) is silent as to review of agency action inconsistent with federal laws Congress itself amended to implement the Agreements.

Given the strong presumption favoring judicial review, silence on this subject is not enough to preclude judicial review. Both courts below simply failed to distinguish between the Agreements, which Congress did not

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[8] This subsection reiterates that the Agreements did not become federal law of their own force, *i.e.*, that they were not self-executing. 19 U.S.C. § 3512(a)(1).

intend to become self-executing federal law, and the modifications to United States law that Congress itself made to implement the Agreements, which were indisputably intended to become binding federal law. While Congress has clearly precluded judicial review of an agency's failure to comply with the Agreements themselves, it has just as clearly not precluded judicial review of an agency's failure to comply with federal laws Congress enacted to implement the Agreements. This straightforward conclusion is consistent with principles of law governing treaties and other international agreements as well as the legislative history of the Act.

Treaties and other international agreements, such as the trade agreement at issue here, are the supreme law of the land. U.S. Const. Art. IV, § 2. *See generally* Henkin, *Foreign Affairs and the Constitution* 173-88 (1972). These agreements are not necessarily "self-executing" – they frequently require Congressional implementation through amendments to United States statutes before they actually attain the status of law. *See id.* at 156-61. Statutes amended to implement these agreements supersede corresponding provisions of the original agreement, the amended statutes become the law of the land, and, for purposes of United States law, the superseded international obligations no longer exist.[9] *See, e.g., The Chinese*

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[9] Had the Agreements' wine trademark provisions been self-executing, they would still have ceased to exist because Congress adopted them in altered form. Article 23 provides that geographic indications for wine which do not originate in the location indicated could not be used or registered. Article 24 created an exception for marks in use for ten years before April 15, 1994, but signatories were not required to impair rights

Exclusion Case, 130 U.S. 581 (1889); *The Head Money Cases*, 112 U.S. 580 (1884). The legislative history of the Act recognizes these principles.

> Section 102 [of the Act] establishes the relationship between the Uruguay Round agreements and U.S. law. The implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under those agreements. The bill accomplishes that objective with respect to federal legislation by amending existing federal statutes that would otherwise be inconsistent with the agreements and, in certain instances, by creating entirely new provisions of law.
>
> As Section 102(a)(1) clarifies that no provision of a Uruguay Round agreement will be given effect under domestic law if it is inconsistent with federal law, *including provisions of federal law enacted or amended by the bill.* Section 102(a)(1) will not prevent implementation of federal statutes consistently with the Uruguay Round agreements, where permissible under the terms of such statutes. *Rather, the section reflects the Congressional view that necessary changes in federal statutes should be specifically enacted rather than provided for in a blanket preemption of federal statutes by those agreements.*

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acquired before the Agreements became effective. *Id. See* Administrative Action at 4282-83. In amending the Lanham Act, Congress eliminated the ten year continuous use requirement and changed the grandfather date to one year after the Act became law.

Administrative Action, 1994 U.S. Code Cong. & Admin. News at 4050 (emphasis added).

Given the limitations on a private right of action and judicial review in the Act, it is apparent that Congress intended that the Agreements would be implemented into United States law only to the extent Congress chose to implement them. Once Congress acted to implement the Agreements, the statutes modified or added as a result became the governing law. As to those statutes, the Agreements had no force, independent or otherwise, for Congress had superseded the Agreements as to those subjects. In short, these statutes were to be treated the same as all other federal statutes.

Given these principles, there is no warrant for singling out statutes modified by Congress to implement the Agreements for exclusion from agency compliance under the APA.

This problem is not a matter of isolated interest. As noted, the Act amended or modified some two hundred and fifty sections of the United States Code. Other international agreements have similarly modified many federal statutes when Congress implemented their provisions. In the North American Free Trade Agreement Implementation Act (NAFTA), for example, Congress amended or modified approximately two hundred sections of the Code. Pub.L. 103-182, 107 Stat. 2057 (1993). NAFTA contains identically-worded prohibitions on judicial review of agency compliance with the NAFTA Agreements themselves, but no language precluding review for consistency with statutes Congress modified to implement NAFTA. 19 U.S.C. § 3312.

The reasoning of the Courts below would exempt from judicial review under the APA a multitude of agency actions inconsistent with hundreds of statutes. There is nothing in the language of the Act, its legislative history, or other international trade agreements such as NAFTA to indicate Congress intended this result. The error below has permitted an administrative agency regulation with a 1986 grandfather date to supersede an Act of Congress establishing a 1996 grandfather date for continued use of geographic trademarks on wine labels.

CONCLUSION

The Court should grant certiorari, reverse the determination that the Act precludes review under the APA, and return this matter to the Court of Appeals with directions to proceed to the merits of Petitioner's APA claim that ATF acted inconsistently with the Lanham Act.

Dated: July 9, 1999

Respectfully submitted,

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APPENDIX

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRONCO WINE COMPANY, a California corporation, Plaintiff-Appellant, v. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS; JOHN W. MAGAW, Director of the Bureau of Alcohol, Tobacco and Firearms; GERARD W. LARUSSO, acting as Chief of the Alcohol and Tobacco Programs Division; EDWARD O'TOOLE, Special Operations Inspector of the Bureau of Alcohol, Tobacco and Firearms; JANET CALHOON, Group Supervisor of the Bureau of Alcohol, Tobacco and Firearms; UNITED STATES DEPARTMENT OF TREASURY, Defendants-Appellees.	No. 98-15444 D.C. No. CV-96-06354-REC MEMORANDUM[1] (Filed Feb. 11, 1999)

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court
for the Eastern District of California
Robert E. Coyle, District Judge, Presiding

Argued and Submitted February 8, 1999
San Francisco, California

Before: WOOD[2], THOMPSON and THOMAS, Circuit Judges.

Bronco Wine Company ("Bronco") appeals the dismissal of its suit against the U.S. Bureau of Alcohol, Tobacco, and Firearms ("Bureau") and its agents. After consideration of the briefs, the record and the oral arguments presented by the parties, we affirm. Because the parties are familiar with the factual and procedural history of the case, we need not recount it here.

I

The district court correctly concluded that there is no private right of action afforded Bronco for the Lanham Act claims it asserts in this litigation. Although 15 U.S.C. § 1052 references registration of wine trademarks in the context of the Uruguay Round Agreement, the Lanham Act does not provide a cause of action under which Bronco could bring a claim. *See* 19 U.S.C.A. § 3512(c) (West 1994 & Supp. 1998) (stating that no one other than the United States "shall have a cause of action under the [Uruguay Round] Agreement"). Likewise, the Administrative Procedures Act ("APA") cannot be grounds for a

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[2] The Honorable Harlington Wood, Jr., Senior United States Circuit Judge for the Seventh Circuit Court of Appeals, sitting by designation.

Lanham Act claim because the APA specifically excludes review when a statute precludes judicial review. See 5 U.S.C. § 701(a)(1) (1994).

Bronco's theories against the Bureau based on the wine seizure and the warning letter advising Bronco that its use of the word "Rutherford" was contrary to federal regulations fail because neither act constituted a "final agency action" subject to judicial review under the APA. *See Bennett v. Spear*, 117 S.Ct. 1154, 1168 (1997) (stating that two conditions must be satisfied in order for agency action to be considered final agency action, first that the agency action "must mark the consummation of the agency's decisionmaking process," and second, that the action must "be one by which rights or obligations have been determined, or from which legal consequences will flow").

Thus, the district court properly dismissed Bronco's claims against the Bureau.

II

The district court also properly held that the individual Bureau agents were entitled to qualified immunity, barring Bronco's claims against them. Qualified immunity analysis requires (1) an identification of the right at issue; (2) a determination as to whether the identified right was so clearly established that a reasonable officer would have been alerted to its constitutional parameters; and (3) an assessment as to whether a reasonable officer would have believed the conduct at issue was lawful. *See V-1 Oil Co. v. Smith*, 114 F.3d 854, 857 (9th Cir. 1997). In determining what rights were "clearly established" at the

time of the seizure, we survey the legal landscape as it existed at the time, examining cases that are most like the case at bar. *See Figueroa v. United States*, 7 F.3d 1405, 1409 (9th Cir. 1993). In the absence of binding precedent, we look to all available decisional law. *Id.*

Bronco cannot cite any controlling decisional authority, nor any which might indicate that the law which it argues supports its position was "clearly established" in this instance. Bronco's reliance upon *Cabo Distributing Co. v. Brady*, 821 F.Supp. 601 (N.D. Cal. 1992), is misplaced because it involved revocation of a certificate of label approval, not a summary seizure. *See id.* at 607. To the contrary, the defendants cite instances in which summary seizures have been upheld in a number of contexts. *See, e.g., United States v. James Daniel Good Real Property*, 510 U.S. 43, 53 (1993); *Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594, 601 (1950). Thus, at the time of the seizures, the law was not "clearly established" that summary seizures of alcohol based on a reasonable suspicion of mislabeling in violation of applicable regulations was unconstitutional. Accordingly, the district court properly granted the individual officers qualified immunity.

AFFIRMED.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRONCO WINE COMPANY, a California corporation, Plaintiff-Appellant, v. BUREAU OF ALCOHOL, TOBACCO AND FIREARMS; JOHN W. MAGAW, Director of the Bureau of Alcohol, Tobacco and Firearms; GERARD W. LARUSSO, acting as Chief of the Alcohol and Tobacco Programs Division; EDWARD O'TOOLE, Special Operations Inspector of the Bureau of Alcohol, Tobacco and Firearms; JANET CALHOON, Group Supervisor of the Bureau of Alcohol, Tobacco and Firearms; UNITED STATES DEPARTMENT OF TREASURY, Defendants-Appellees.	No. 98-15444 D.C. No. CV-96-06354-REC ORDER (Filed Apr. 13, 1999)

Before: WOOD[1], THOMPSON and THOMAS, Circuit Judges.

The appellant's petition for rehearing is DENIED.

[1] The Honorable Harlington Wood, Jr., Senior United States Circuit Judge for the Seventh Circuit Court of Appeals, sitting by designation.